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Supreme Court of the United States

October Term, 1941

No. 235.

EVERETT E. WILLEY
By HENRY E. WILLEY, His Next Friend
and
HENRY E. WILLEY,
Petitioners

v.

MAINE CENTRAL RAILROAD COMPANY

BRIEF OF RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE MAINE SUPREME JUDICIAL COURT.

EDWARD W. WHEELER,
Portland, Maine.

CARROLL N. PERKINS,

THOMAS N. WEEKS,

BRADFORD H. HUTCHINS,
Waterville, Maine.

Counsel for Respondent.

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SUMMARY OF ARGUMENT.

The petitioner contends that his right of trial by a jury has been infringed. It has been definitely decided by the Supreme Court of the United States that the Federal Constitution guarantees no such right in State Courts. Therefore, the Supreme Judicial Court of Maine has not decided this case "in a way probably not in accord with applicable decisions of this Court" and certiorari should not be granted.

FACTS.

For the purpose of this brief it does not seem necessary to review the facts other than to say that the case was originally heard by the Superior Court holden in Penobscot County, Maine, in conformity with the laws of Maine, that the Judge after hearing the plaintiff's case concluded that the facts presented did not support the plaintiff's contention or present evidence which would justify a jury in finding for the plaintiff. This action, agreeable to the laws and practice of the State, was accordingly non suited upon motion of the defendant. Upon exceptions heard by the Supreme Judicial Court of Maine, the exceptions were overruled, and later the petition of the plaintiff to rectify errors was dismissed and his motion denied. For the purpose of the record, however, the accuracy of the petitioner's "statement of the case" (Sec. 3 of the petition) is denied.

ARGUMENT.

According to the petition to rectify errors filed in the Supreme Judicial Court of Maine and according to the peti-

tion for writ of certiorari filed with this Honorable Court (Sec. 4 specifications of errors #2) the only Federal question involved is whether or not the State Courts violated the due process clause and the equal protection clause of the Fourteenth Amendment to the Constitution of the United States of America in granting a nonsuit and thereby preventing the jury from making findings of fact therein.

According to the Revised Rules of the Supreme Court of the United States adopted February 13, 1939, and as subsequently amended, Rule 38, Paragraph 5, subdivision (a) concerns the granting of a right to review a decision of the State Court. Paragraph 5, subdivision (a) so far as relevant reads:

> " . . . . . The following while neither controlling or fully measuring the court's discretion, indicate the character of reasons which will be considered. (a) Where the State Court has decided a federal question of substance not theretofore determined by this court, or has decided it in a way probably not in accord with applicable decisions of this court."

Reduced to its simplest form the question is, should a writ of certiorari be granted in this case because a novel Federal question has arisen, or because a decision has been made not in accord with the applicable decisions of this court for the reason that the courts of Maine have violated the Fourteenth Amendment to the Federal Constitution by preventing through a nonsuit a finding of fact in this case by the jury?

The respondent contends that no such reason exists for the granting of the writ in this case because the question here raised is neither novel nor is the State Court's decision repugnant to the principles laid down by the Supreme Court of the United States. On the contrary the Federal decisions have decisively settled this issue.

The case of *Walker* v. *Sauvinet,* 92 U. S. 90 (1875), clearly establishes the principle that

> "A trial by jury in suits at common law pending in the State courts is not, therefore, a privilege or immunity of national citizenship, which the States are forbidden by the Fourteenth Amendment to abridge. A State can not deprive a person of his property without due process of law; but this does not necessarily imply that all trials in State Courts affecting the property of persons must be by jury. This requirement of the constitution is met if the trial is had according to the settled course of judicial proceedings."

See also *Maxwell* v. *Dow,* 176 U. S. 581; 7 S. Ct. 448, 453.

That the granting of nonsuits by nisi prius courts of Maine is according to the settled course of judicial proceedings can not be questioned. This course has been affirmed as lawful and constitutional from the very inception of the Maine judiciary. Thus it was recognized in the case of *Perley* v. *Little,* 3 Maine 97 (1824), that as the proof presented by the plaintiff was "incompetent to maintain the action, admitting it to be true," the court had the right to order a nonsuit and it was further decided that because of the plaintiff's right to except to and be heard before the appellate court, such procedure guaranteed ample justice.

The propriety of a nonsuit was also recognized in the cases of *Cole* v. *Bodfish,* 17 Maine 310 (1840) and *Bragdon* v. *Appleton Mutual Fire Insurance Company,* 42 Maine 259 (1850).

The Supreme Court of the United States has recognized the constitutionality of the granting of a nonsuit in the case of *Coughran* v. *Bigelow, et al.,* 164 U. S. 301; 17 S. Ct. 117 (1896). Mr. Justice Shiras said:

> "The foundation for those rulings was not in the constitutional rights of a trial by jury, for it has long been the doctrine of this court that . . . . . if the evidence be not sufficient to warrant a recovery, it is the duty of the courts to instruct the jury accordingly, and, if the jury disregard such instruction, to set aside the verdict."

He then noted the remark of Mr. Justice Field

> "that the difference between a motion to order a nonsuit of the plaintiff and a motion to direct a verdict for the defendant is 'rather a matter of form than of substance.' "

The Justice then cited *Central Transportation Company* v. *Pullman's Palace Car Company,* 139 U. S. 24-38, and said

> "It is the clear implication of this case that granting a nonsuit for want of sufficient evidence is not an infringement of the constitutional right of trial by jury."

The propriety of a directed verdict was affirmed in *Randall* v. *Baltimore and Ohio Railroad Company,* 109 U. S. 478, 3 S. Ct. 322 (1883)

> "It is the settled law of this court that when the evidence given at the trial, with all inferences that the jury could justifiably draw from it, is insufficient to support a verdict for the plaintiff, so that such a verdict, if returned, must be set aside, the court is not bound to submit the case to the jury, but may direct a verdict for the defendant. *Pleasants* v. *Fant,* 22 Wall. 116; *Herbert* v. *Butler,* 97 U. S. 319; *Bowditch* v. *Boston,* 101 U. S. 16; *Griggs* v. *Houston,* 104 U. S. 553. And it has recently been decided by the House of Lords upon careful consideration of the previous cases in England, that it

is for the judge to say whether any facts have been established by sufficient evidence from which negligence can be reasonably and legitimately inferred; and it is for the jury to say whether from those facts, when submitted to them, negligence ought to be inferred. *Metropolitan Ry. Co.* v. *Jackson,* 3 App. Cas. 193."

CONCLUSION.

As the petition for writ of certiorari presents no novel question of Federal law and as the courts of the State of Maine in this instance have acted in conformity with the well settled constitutional principles laid down by this Honorable Court it is, therefore, urged that the plaintiff's petition be denied.

Respectfully submitted,

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